

REMARKS

Claims 18-29 are pending in the application. It is believed that claims 18-29 are subject to a restriction requirement by the Examiner.

Reply to the Restriction of Claims 18-29 under 35 U.S.C. § 121

The Examiner alleges that Claims 18-29 are generic to the following disclosed patentably distinct species belonging to amylose-containing starch –

1. Cornstarch modified.
2. Polyquaternium-4 / hydroxypropyl starch phosphate.
3. Cationic cornstarch.
4. Cationically modified cornstarch.
5. Hydrophobically modified cornstarch.
6. Corn Starch.
7. CWS agglomerated cornstarch.
8. Enzyme debranched waxy maize starch.
9. Potato starch.
10. CWS cornstarch.

With respect to the present restriction, Applicants elect with traverse corn starch. All of the present claims would encompass corn starch. For the following reasons, Applicants strongly assert that the Examiner's species restriction is improper and respectfully request reconsideration of the species restriction requirement.

For a restriction requirement to be proper under Section 121, an application must claim two or more "independent and distinct" inventions. Independent is understood to mean unrelated or no disclosed relationship between the two or more inventions claimed.

The species defined in the restriction above are found in the Tables on pages 11, 13 and 15 of the present application, which are examples of amylose-containing starches useful in the present invention, as well as non-amylose containing starches and synthetic polymers presented for comparison. Only corn starch is specifically mentioned in the claims, specifically, dependent claim 24. Claims 22 and 23, both of which depend from dependent claim 21, are directed towards amylose-containing starches that are modified cationically and nonionically,

respectively. Claim 22 would include at least species 3 and 4 listed above. Claim 21 is more broadly directed towards modified amylose-containing starches and therefore would encompass species 1-5, 7, 8 and 10 listed above as all are examples of modified starches.

If the species disclosed in the specification possess at least one property in common which is mainly responsible for their function in the claimed relationship, and it is clear from their very nature or from the prior art that all of them possess this property, then no restriction should be required. All species contain amylose and therefore have at least one property in common. Claim 24, which is the only claim that specifically mentions one of the species listed above, depends from independent claim 18, which generically refers to amylose-containing starch. Each of the starch species listed explicitly above or either directly or indirectly in the claims requires that they contain amylose in order to provide stability and, as such, are related to each other. Accordingly, as the species of the restriction are related to each other, the 'independent' threshold is overcome.

Regarding the 'distinct' requirement, it is understood that related inventions can be distinct if the inventions *as claimed* are not connected in at least one of design, operation or effect. As previously noted, all of the species contain amylose (*i.e.*, are obvious variants) and therefore are connected in design. The present invention illustrates the use of amylose-containing starches for providing stability to hair color. As such, each species is connected in operation and effect. Accordingly, Applicants assert that the Examiner erred in stating that the species have "mutually exclusive characteristics".

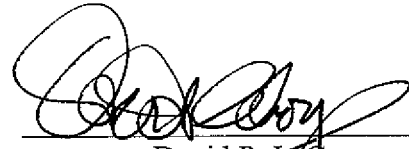
Because the species listed by the Examiner are not independent of each other, nor are they distinct from each other, the Examiner's restriction requirement is improper and should be withdrawn (MPEP § 803). Further, as each species claimed contain amylose, the examination and search required by the Examiner is not onerous, as the field of search can be focused on amylose containing starch. Applicants assert that the Examiner has failed her burden of providing reasons and/or examples in supporting her restriction requirement. Merely stating that the species require different fields of search without any support is improper (MPEP § 803, "II. Guidelines"). The same is true of the Examiner's allegation that the prior art applicable to one species would not "likely" be applicable to another species; and/or the species are "likely" to raise different non-prior art issues. . . It is the Examiner's burden to provide reasons and/or

examples for these claims, and not merely speculate as to what might be required without more. Here, the Examiner has failed to do so; therefore, the restriction requirement is improper.

For at least the above reasons, Applicants traverse the Examiner's restrictions of the two sets of species and respectfully request reconsideration of those restrictions. Examination on the merits or allowance of the presently pending claims is further requested.

Respectfully submitted,

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